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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1264 OF 2004
IN
SECOND APPEAL NO.1036 OF 2004**

Vasant Balaku Patil ...Applicant
V/s.
Hari Dhondiba Salokhe ...Respondent

Mr.G.N. Salunkhe, Advocate, i/b. V.S. Kokitkar, for
the Applicant.

Mr.Sandesh Patil, Advocate, for the Respondent.

CORAM : ABHAY S. OKA, J.

DATE : 20TH DECEMBER, 2007.

P.C.:

1. Heard the learned Advocate appearing for the applicant. Applicant is the plaintiff-appellant in the Second Appeal. A decree of declaration passed by the Trial Court in favour of the applicant reads thus:-

"2. It is hereby declared that the sale deed of suit land Gat No.686 executed by Defendant No.1 in favour of Defendant No.2 is not binding upon the undivided share and interest of Plaintiff."

2. The Trial Court recorded a finding that the applicant-plaintiff is having undivided share and

interest in the suit property. The decree of the Trial Court has been set aside by the Appellate Court. The finding regarding undivided share of the applicant has been confirmed by the Appellate Court.

3. Prayer (b) of this Application reads thus:-

"(b). Pending the hearing and final disposal of this Second Appeal, the defendants and his agents, servants, representatives etc. be restrained by and order of injunction of this Hon'ble Court from causing obstruction to the actual and physical possession of the applicant over the suit properties viz. Gat No.686 situated at Mouje Hasur Khurd, Taluka Kagal, District Kolhapur."

4. It is an admitted position that neither during the pendency of the Appeal nor during the pendency of the Suit such order of injunction was granted in favour of the applicant.

5. The applicant is relying upon an order made in execution of the decree passed by the Trial Court. The said order will not help the applicant for two reasons. Firstly, the decree has been set aside and secondly, the Trial Court did not grant any decree of injunction in favour of the applicant.

6. The Courts have not accepted the alleged exclusive possession of the applicant. Hence, no case is made out for grant of interim relief. Hence, the Civil Application is rejected.

[ABHAY S. OKA, J.]